IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 26

HENRY ANTON PFISTER, *Petitioner*,

vs.

NORTHERN ILLINOIS FINANCE CORPORATION, ALGONQUIN STATE BANK, HARTMAN AND SON, et al.

No. 27

HENRY ANTON PFISTER, *Petitioner*,

vs.

NORTHERN ILLINOIS FINANCE CORPORATION, ALGONQUIN STATE BANK, HARTMAN AND SON, et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

Copies of the applicable portions of Sections 2(10), 38 and 39a(8) and 39(c) and the whole of Section 75 of the Bankruptcy Act are inserted for reference in Appendix A following this brief.

The digest of cases referred to in this brief is collected in a "Supplemental Brief" which was filed with the Petition and Brief on the application for Writs of Certiorari.

I.

Index.

The index follows the front cover.

II.

THE REPORT OF THE OPINION BELOW.

The opinion of the Appellate Court below is reported as *Pfister* v. *Northern Illinois Finance Corporation*, CCA 7, 123 Fed. (2d) 523, decided November 10, 1941. R. 209 to 215.

The District Court below issued no opinion. The two final orders of the District Court are found at R. 173 to 178.

III.

Jurisdiction.

This court granted writs of certiorari on March 30, 1942. R. 236.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code; 28 USC 347(a).

The petitioner complied with Section 8(a) of the Act of February 13, 1935; 28 USC 350. The judgments of the ap-

pellate court below became final on December 6, 1941, when his petition for rehearing was denied. R. 220. The petition for certiorari was filed within three months thereafter.

IV.

A CONCISE STATEMENT OF THE CASE.

The Farmer Debtor and His Property.

The petitioner is a farmer debtor who owns, and with his family, resides upon and operates an 80 acre dairy farm in Illinois. His other property consists of approximately 20 cows, 1 bull, 3 horses, 20 hogs, and 130 chickens, together with the usual implements and other equipment necessary to operate such a dairy farm. R. 14, R. 20, R. 70 to 72.

The Farmer Debtor Law Invoked.

Becoming indebted beyond his ability to pay, he filed his farmer debtor petition for composition or extension of his debts under Section 75 of the Bankruptcy Act. Failing to obtain a settlement with his creditors, he amended his petition pursuant to Section 75(s) of that Act in order to obtain the three year statutory stay while paying rental, pending his eventual rehabilitation by redeeming his mortgaged property at its appraised valuation.

The Incapacity of Farmer Debtor's Counsel.

After the amended petition had been filed and before the first creditors' meeting under it, the farmer debtor's counsel, J. E. Dazey, Esq., became incapacitated as a result of a stroke of apoplexy and participated no further in the case except to prepare his affidavit which described his physical condition. R. 34.

Mr. Dazey resided in another federal court district of the State of Illinois and in compliance with a local court rule, he had designated a young local attorney, Robert E. Coulson, Esq., as co-counsel for the purpose of filing papers, and receiving service. Mr. Coulson was not retained by the farmer debtor and he was not authorized to represent the farmer debtor in any substantive capacity, nor did he attempt to do so. R. 30, par. 6. For statement verified by Robert E. Coulson, see R. 30, par. 6 and R. 34, top of page. For Mr. Dazey's affidavit see R. 34, bottom of page and top of R. 35. See also R. 89, par. 2. Mr. Coulson's affidavit is at R. 94 to 95. See also R. 146 par. 15. Denied by creditors: R. 36, par. 6. R. 97, par. 2. R. 154, par. 10.

Mr. Coulson has not participated in the proceeding since shortly after the orders complained of except to verify the petition of the farmer debtor to the Judge of the District Court for a restraining order which sought to stop a sale then believed to be imminent and to make his affidavit as part of the petition for rehearing of the purported orders of September 7, 1940 R. 27 to 35. (His verification is noted at R. 34, top of page.) His affidavit is at R. 94 to 95.

The First Creditors' Meeting.

Order of August 13, 1940, approving appraisal, staying proceedings, fixing rental and principal payments (noted at R. 9, entry of August 13, 1940 and R. 10, entries of August 13, 1940. The order is at R. 72 to 77.)

On August 13, 1940, was held the first creditors' meeting under the amended petition pursuant to Section 75(s). At that meeting the conciliation commissioner approved the appraisal and set off the farmer debtor's exemptions. R. 10, entries of August 13, 1940. R. 69 to 72.

On the same day, without any preliminary notice whatever, three of the respondents presented motions praying that rent be set at $6,375 for three years and that additional payments on the principal of debts be ordered paid in the sum of $6,375 making a total of $12,750 to be paid within the three-year period. These motions are noted at R. 9, entry of August 13, 1940. These motions were granted on the same day by ordering the total of $12,750 to be paid by the farmer debtor within 2 years, 8 months, and 18 days. Rental was to be paid semi-annually while the principal payments were to be made quarterly. R. 72 to 77. The estate from which, under the statute, this sum of $12,750 was to be obtained out of its earnings, as well as whatever would be needed to achieve rehabilitation of the estate at its appraised value, was comprised of the real estate appraised at $16,000 and unexempt chattels appraised at $1,786.00. R. 70 to 72.

The order of August 13, 1940, also stayed proceedings for two years, eight months and 13 days from that date. That is, a so-called three-year statutory stay was made to run, not from the entry of the order as required by the statute, but from April 26, 1940. The last payment was ordered to be made by April 26, 1943. R. 9, entry of August 13, 1940. R. 72 to 77. Sec. 75(s)(2). *Wright* v. *Union Central*, 311 U. S. 273, 275, citing *John Hancock* v. *Bartels*, 308 U. S. 180 and *Borchard* v. *California*, 310 U. S. 311.

Adjourned Creditors' Meeting.

The Purported Orders of September 7, 1940, to sell cows, etc., as "perishable." (R. 10, end of paragraph continued from R. 9. R. 10, entry of September 7, 1940. R. 40, Exhibit "B". The orders are at R. 77, R. 80, and R. 82).

The creditors' meeting of August 13, 1940, was adjourned to September 7, 1940, when three additional orders are purported to have been issued. The uncertainty concerning the actual time of entry of these three orders is discussed at page 28 of this brief under heading "Sixth."

Creditors' petitions for reclamation of mortgaged chattels were pending before the conciliation commissioner. R. 8 to 9, entries of August 7, August 8, and August 10, 1940. Those which were granted appear at R. 42 to 48, R. 48 to 60, and R. 60 to 65.

The orders issued in compliance with the motions ordered sold as "perishable property" the farmer debtor's cows, bull, horses, sows, farm machinery and his 1939 crops. R. 77 to 88. This would have left him, after this shearing, with which to comply with the rental, principal payment and stay order of August 13, 1940, and to accomplish his rehabilitation, his farm and these chattels: household goods worth $105; 4 heifers worth $50; 15 pigs worth $20; 130 hens worth $50; and an automobile worth $275 and which was mortgaged for its full value. R. 18. R. 71. Total $510 of which only $235 was free of mortgage.

The Effect of the Orders of August 13 and September 7, 1940.

These orders appear at R. 72, R. 77, R. 80 and R. 82.

A general recapitulation of his financial obligation to the court under the orders of August 13 and of September 7, 1940, shows that out of his 80 acre, 20 cow, dairy farm and $510 worth of chattels he would, within 2 years, 8 months and 13 days, have to find, as a result of these two orders:

1.

The Payments to Be Made.

August 28, 1940—Extra payment	$ 406.25
October 26, 1940—Rental $812.50, Extra payment $406.25	1,218.75
January 26, 1941—Rental	406.25
April 26, 1941—Rental $812.50, Extra payment $406.25	1,218.75
July 26, 1941—Extra payment	531.25
October 26, 1941—Rental $1062.50. Extra payment $531.25	1,593.75
January 26, 1942—Extra payment	531.25
April 26, 1942—Rental $1062.50. Extra payment $531.25	1,593.75
July 26, 1942—Extra payment	656.25
October 26, 1942—Rental $1312.50. Extra payment $656.25	1,968.75
January 26, 1943—Extra payment	656.25
April 26, 1943—Rental $1312.50. Extra payment $656.25	1,968.75
Total necessary to meet the combined orders of August 13 and September 2, 1940 within 2 years 8 months 13 days	$12,750.00

2.

The Final Redemption Payments.

By April 26, 1943, the farmer debtor would be confronted with the necessity of redeeming his farm and automobile pursuant to Section 75(s)(3) by paying their appraised value less payments on principal. The appraisal of the farm was $16,000. R. 69. to 70. The automobile was appraised at $275. R. 71.

There are other liens against the farm (R. 17 to 18), of more than $6000. The rent payments would be applied

first to upkeep and taxes. Section 75(s)(2). Delinquent taxes alone were $1028.32 on June 12, 1940. R. 6, entry of June 12, 1940. Current taxes are not stated. After upkeep and taxes were paid the balance of rent payments would be paid to creditors "as their interests may appear." The first mortgage bears 7 per cent. R. 16. After paying $12,750 within 2 years, 8 months and 13 days, he probably would find himself with the same financial situation that confronted him in the beginning.

The result would inevitably be that he could not rehabilitate himself. Yet Section 75(s)(2), makes the power of the conciliation commissioner to order principal payments conditioned upon "the debtor's ability to pay, with a view to his financial rehabilitation." Section 75(s)(2).

Application for Emergency Restraining Order Against the Conciliation Commissioner (R. 27 to 34).

In September the farmer debtor heard from some source that his chattels were to be sold or advertised for sale upon order of the conciliation commissioner. He notified Mr. Dazey, his incapacitated counsel, who secured new counsel for the purpose of stopping the sale and securing redress from the stay, rental and extra payment order. The new counsel was unable to find any such order. R. 32, paragraphs 8 and 9. Verification by Robert Coulson, local attorney, noted at R. 34, top of page. R. 90, par. 3. The farmer debtor therefore on September 17, 1940, filed his petition for an order restraining the conciliation commissioner from selling his chattels. R. 27 to 34. It was denied by the judge of the District Court by his order entered September 19, 1940 (R. 41), alternative remedies being deemed adequate.

Petitions for Rehearing and Their Denial.

On September 16, 1940, the day preceding the filing of the application for a restraining order, the farmer debtor filed with the conciliation commissioner his petition for rehearing of the stay, rental and principal payment order of August 13, 1940. R. 139 to 147. The affidavits of Attorneys Dazey and Coulson therein referred to are at R. 34 to R. 94. To this petition for rehearing a motion by the creditors to dismiss for want of jurisdiction in the conciliation commissioner to hear it was overruled. R. 148. R. 149 to 150. The creditors then filed answers. R. 151 to 157. The conciliation commissioner, after a hearing, and after considering the whole proceeding denied the petition for rehearing on November 28, 1940. R. 158 to 164. R. 13, entry of November 28, 1940.

On September 20, 1940, he filed with the conciliation commissioner his petition for rehearing of the three "perishable property" sale orders of September 7, 1940. R. 88 to 96. An oral motion to dismiss this petition for rehearing for want of jurisdiction in the conciliation commissioner to hear them was denied although the record does not show it.[1]

Answers were filed by the creditors. R. 97 to 108. The conciliation commissioner after a hearing and after fully considering the petition for rehearing and the whole proceeding denied it. R. 11, entries of September 20, September 23, September 26 and September 30, 1940. R. 109 to 116.

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[1] This statement was also made in the Appellate Court below ("Appellant's Brief" at pages 13 to 14 and in the oral argument). It was repeated in the petition and brief for certiorari. It has never been denied.

Petitions for Review.

On October 9, 1940, a petition for review of the three orders of September 7, 1940, for the sale of the farmer debtor's chattels as "perishable property" was filed with the conciliation commissioner. R. 116 to 129. It was also duly certified by the conciliation commissioner to the District Court. R. 130 to 132.

On November 28, 1940, a petition for review of the order of August 13 relating to rental, principal payments and stay was filed with the conciliation commissioner. R. 165 to 172. It was duly certified by the conciliation commissioner to the District Court. R. 172 to 173.

Dismissal by the District Court of the Petitions for Review.

On December 16, 1940, the **District Court dismissed both petitions for review upon the ground, in each instance, that here was no jurisdiction to hear them.** R. 173 to 178.

Affirmance by the Circuit Court of Appeals.

The Circuit Court of Appeals affirmed the dismissals by the District Court. Opinion, R. 209 to 215. *Pfister* v. *Northern Illinois*, 123 Fed. (2d) 543. Final orders, R. 215 to 216. Petition for rehearing denied. R. 20.

V.

SPECIFICATION OF ERRORS.

1.

The Appellate Court erred in holding that the District Court did not have jurisdiction to hear a petition for review which was filed within the four-months period following approval of the appraisal, as fixed by Section 75(s).

2.

The Appellate Court erred in holding that the District Court had no jurisdiction to hear a petition for review which was filed within 10 days after the denial of a petition for rehearing of an order complained of, no right having intervened, and said petition for rehearing having been entertained and considered, and the entire proceeding having been considered by the conciliation commissioner.

3.

The Appellate Court erred in holding that the District Court had no jurisdiction to hear a petition for review of a void order of a conciliation commissioner unless such petition for review was filed within ten days of the entry of such void order.

4.

The Appellate Court erred in holding that the District Court had no jurisdiction, while a farmer debtor proceeding was still pending, to hear a petition for review of an order entered by a conciliation commissioner, regardless of when such petition for review was filed.

5.

The Appellate Court erred in holding that Section 39(c) of the Bankruptcy Act in naming ten days for the filing of a petition for review is a statutory limitation and not a rule of procedure.

6.

The Appellate Court erred in holding that Section 2(10) of the Bankruptcy Act is limited by Section 39(c) of that act.

7.

The Appellate Court erred in holding that Section 38 of the Bankruptcy Act is limited by Section 39(c) of that Act.

8.

The Appellate Court erred in holding, in a farmer debtor proceeding pending before a conciliation commissioner where a petition for rehearing of an order is filed, no right having intervened, and where also said petition for rehearing is entertained by the conciliation commissioner who overrules a motion to dismiss it for lack of jurisdiction to entertain it, and considers the whole proceeding and then denies the petition, that the time for seeking a review of said order does not run from the date of the denial of such petition for rehearing.

9.

The Appellate Court erred in holding that in a farmer debtor proceeding the period named in Section 39(c) of the Bankruptcy Act limits the time within which a petition for rehearing of an order may be filed with a conciliation commissioner, no right having intervened.

10.

The Appellate Court erred in holding that a conciliation commissioner in a farmer debtor proceeding may not entertain or consider a petition for rehearing of his order except when such petition is filed within ten days of the entry of the order, even though no right has intervened.

11.

The Appellate Court erred in sustaining the District Court in declining to hear and in dismissing, on the ground of lack of jurisdiction, a petition for review of the order of the conciliation commissioner which fixed the statutory stay and rental period in the farmer debtor proceeding to run from a date prior to the approval of the appraisal and prior to the order setting aside exemptions.

12.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, on the ground of lack of jurisdiction, a petition for review of the statutory order of the conciliation commissioner which stayed proceedings and permitted possession to be retained by the farmer debtor upon payment of rental, and made the time of such stay and possession less than three years.

13.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner which ordered sold as perishable property the farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay fodder, ensilage, oats, barley, rye and wheat.

14.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, upon the ground of lack of jurisdiction, a petition for review of an order by a conciliation commissioner ordering the farmer debtor to pay as rental and as payments on the principal of his debts, within 2 years, 8 months and 13 days, the total sum of $12,750 where the apprasial of all the real estate is $16,000 and the appraisal of all the unexempt chattels is $1,786.

15.

The Appellate Court erred in sustaining the District Court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner, when proceedings for obtaining such review had been perfected by the filing of a petition for review by a person aggrieved by such order and the serving of a copy of said petition upon the proper adverse parties, and when the conciliation commissioner had duly prepared and transmitted to the clerk his certificate on said petition for review, all in compliance with Section 39(c) of the Bankruptcy Act, such dismissal being based upon the sole reason that said petition for review was not filed within ten days after the original entry of the order complained of.

VI.

SUMMARY OF THE ARGUMENT.

The substantive acts of the conciliation commissioner would deprive the farmer debtor of his farm in violation of the express provisions of Section 75 designed to save it to him and are void. The procedures by which they would be accomplished are subversive of the purpose of the law. Due process of law was violated.

The opinion of the appellate court when compared with the statutes and decisions it rests upon is found to be inconsistent with them.

In holding that the express provisions of Section 75 are limited by other general provisions of the Bankruptcy Act the decision below, if followed, would destroy the farmer debtor law.

In holding that a petition for rehearing, if entertained and considered, does not expunge the finality of an order so that if denied the time for appeal from the order runs from the denial, the decision below runs counter to a principle of law as old as American Jurisprudence.

In holding that a district court has no jurisdiction or power to hear a petition for review, certified to it by a referee, if the petition for review was filed more than ten days after the original entry of an order, the appellate court runs counter to the uniform holdings of other circuits and sustains the district court in a holding inconsistent with that court's former ruling by the same judge in accord with the generally recognized rule.

The holding that orders in direct violation of the express statutory provision in Section 75 may not be corrected, while a farmer debtor proceeding is pending, is contrary to the long established holdings of this court and of the lower courts. Reference is here had to orders: (1) starting the stay period at a date preceding the entry of the order which declared it, (2) fixing a rental impossible to earn from the estate, (3) fixing impossible extra principal payments, and (4) ordering sold as "perishable property" the farmer debtor's dairy cows, bull, sows, horses, farm machinery and crops, all done ostensibly by authority of the statute itself.

VII.

ARGUMENT.

The General Nature of the Orders.

1.

Their Relation to Substantive Rights.

Had the substantive acts of the conciliation commissioner of the Bankruptcy Court below first been narrated in fictional form, they would probably have been considered too fantastic to conform to actuality. They were orders providing for:

1. A foreshortened **stay period of 2 years, 8 months and 13 days**, violative of Section 75(s)(2), and of the pronouncement of this court in *Wright* v. *Union Central*, 311 U. S. 273, 275, citing *John Hancock* v. *Bartels*, 308 U. S. 180, and *Borchard* v. *California*, 310 U. S. 311.

2. **A rental of $6,375 for the foreshortened stay period on an 80 acre, 20 cow dairy farm,** violative of Section 75(s)(2) which requires that "the amount and kind of such rental to be the **usual customary rental** in the community where the property is located, **based upon the rental value, net income, and earning capacity of the property.**"

3. **Extra payments of $6,375 within the foreshortened** stay period, levied, ostensibly, under power granted in Section 75(s)(2) which provides that "The Court . . . may, in addition to the rental, require payments on the principal due and owing by the debtor . . . in payments to be made quarterly, semi-annually or annually, **not inconsistent with** the protection of the rights of the creditors and **the debtor's ability to pay, with a view to his financial rehabilitation.**"

4. The sale of all the farmer's cows, bull, horses, sows, farm machinery, and crops, **under the guise of "perishable property,"** leaving him his household goods, four heifers, 15 pigs, 130 hens and an automobile mortgaged to its full value.

2.

The Procedures Employed.

The various procedures whereby these actions were accomplished before the conciliation commissioner in the Bankruptcy Court below, while not so extravagantly fantastic, were nevertheless violative of the well recognized and long established principles of English and American Jurisprudence which are proudly heralded as part of the amenities of our legal system which distinguish it from others and are held up as examples of the progress of our civilization. They are all the more dangerous, and subversive to the accepted and usual course of judicial pro-

cedure, in that they were packaged in forms intended to carry out the intentions of the law of and established procedure. A perusal of the order of August 13, 1940, at R. 72 to 77, and of the three orders of September 7, 1940, at R. 77 to 88 discloses their design.

The Decision of the District Court Examined.

The final orders of the District Court below (found at R. 173 to 178) are **in conflict with its own decision** in **In re Madonia,** (1940), District Court of Illinois, 32 Fed. Sup. 165, where it held that Section 39(c) does not limit the hearing of a petition for review. See Case No. 31, at page 25, the "Supplemental Brief" herein.

In the **Madonia** case it held that the court **had power** to hear a petition for review filed without leave after ten days saying the statute "should be liberally construed." In its orders of dismissal in these cases (R. 173 to 178) it held that it was "**without jurisdiction.**" See R. 175, top of page. R. 177, middle of page.

The Opinion of the Circuit Court of Appeals Examined.

We here examine the several points made in the opinion of the Appellate Court which is found at R. 209 to 215 and reported in 123 F. (2) 543.

1.

The point that Sec. 39(c) overrides Sec. 75(s).

The opinion reads: R. 210, last paragraph:

"Appellant first contends that Section 75(s) and not Section 39(c) governs appeals and reviews in farmer debtor cases."

The opinion reads: R. 211, bottom of page, R. 212, top of page:

"Our duty is to so construe both sections, if reasonably possible, that both may be effective. This can be done by construing the word "section" in the first paragraph of Section 75(s) to refer only to the part of that paragraph which precedes the proviso, and we thus construe it. The orders here complained of did not arise under this paragraph, but were entered in the course of hearings authorized under Section 75 (s)(4). Hence we think Section 39(c) is controlling here."

The applicable portion of Section 39(c) reads as follows:

"c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing." . . .

The applicable portion of Section 75(s) in the first paragraph reads: "In proceedings under **this section**, either party may file objections, exceptions and take appeals within four months from the date that the referee approves the appraisal."

In *Benitez* v. *Bank*, 313 U. S. 270, discussed at No. 5 at page 5 of the "Supplemental Brief" herein, this court made it very clear that **Section 75 is supreme over all conflicting statutory provisions.**

2.

The point that a petition for rehearing, seasonably filed, entertained, and denied, stopped the running of the time for seeking review.

The opinion reads: R. 212, middle of page:

"Appellant further contends that if Section 39(c) is controlling, his petitions for review were filed in time. His argument in this respect is that his petitions for rehearing stopped the running of time for seeking review; that the finality of the orders of August 13, 1940, and September 7, 1940, was in each instance expunged by a petition for rehearing which he says was seasonably filed, entertained, and denied by the conciliation commissioner.

In support of this contention he relies upon *Bowman* v. *Lopereno*, 311 U. S. 262; *Wayne Gas Co.* v. *Owens-Illinois Co.*, 300 U. S. 131; *United States* v. *Seminole*, 299 U. S. 417, **and analogous cases. The facts in these cases are to be distinguished from those of the case at bar in that the petitions for rehearing were granted, the old judgment was vacated, and a new judgment entered after a rehearing on the merits (as in Wayne Co. v. Owens-Illinois Co., supra), or on the ground that the petitions for rehearing were filed within the time provided for appeal, and the order complained of had never become final until the disposal of the petition (as in Bowman v. Lopereno, supra).** In the present case the petitions for rehearing were not filed within the time allowed for appeal, and each was denied."

With the utmost respect to the Circuit Court of Appeals below it is suggested that **not only the three decisions expressly mentioned by the Appellate Court but also those referred to as "analogous cases,"** all of which were cited by the petitioner as appellant below, **support the law as contended in his behalf there.**

Analysis of the Cases Referred to by the Appellate Court.

The following analysis of the cases cited and referred to by the appellate court is here presented. There were twelve of them including the three cases cited by the appellate court and the "analogous cases" which are also included in the court's remarks, but not cited by it. Of the twelve cases eleven are decisions of this Court and one is of a circuit court of appeals. They are listed below.

It is said in the appellate court's opinion that all these twelve cases are distinguished from this *Pfister* case in that in them the following statements applied which do not apply to this case: These statements, four in all, are first stated, and then measured against the twelve cases.

Statement 1. The petitions for rehearing was granted;

Statement 2. And the old judgment was vacated;

Statement 3. And a new judgment was entered;

Statement 4. Or the petitions for rehearing were filed within the time for appeal.

As to statements 1, 2, 3, or 4, they are correct or incorrect for each of the twelve cases cited, as follows. They are listed in chronological order.

The Three Cases and the "Analogous Cases."

	Statement 1 is:	Statement 2 is:	Statement 3 is:	Statement is:
Brockett v. Brockett, 1843 43 U. S. (2 How.) 283. Case No. 10, p. 9 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorr
Texas v. Murphy, 1844 111 U. S. 487. Case No. 52, p. 39 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Not stat
Aspen v. Billings, 1893 150 U. S. 31. Case No. 4, page 3 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Kingman v. Western, 1898 170 U. S. 675. Case No. 30, page 24 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
United States v. Ellicott, 1912 223 U. S. 524. Case No. 56, p. 42 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Citizens v. Opperman, 1919 249 U. S. 488. Case No. 14, p. 12 of the "Supplemental Brief" herein	Incorrect	Incorrect[2]	Incorrect	Not stat
Morse v. United States, 1926 270 U. S. 151. Case No. 35, p. 29 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Gypsy v. Escoe, 1927 275 U. S. 498. Case No. 22, p. 19 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorr
United States v. Seminole, 1937 299 U. S. 417. Case No. 58, p. 44 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorr
Wayne v. Owens-Illinois, 1937 300 U. S. 131. Case No. 62, p. 46 of the "Supplemental Brief" herein	Correct	Correct	Correct	Incorr
Carpenter v. Condor, CCA 9, 1939 108 Fed. (2d) 318. Case No. 12, p. 11 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Bowman v. Lopereno, 1940 311 U. S. 262. Case No. 8A, p. 7 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorr

[1] But see abstract of the case at No. 52, page 39 of the "Supplemental Brief" herein.

[2] But see abstract of the case at No. 14, page 12 of the "Supplemental Brief" herein.

Thus the analysis of all the twelve cases demonstrates that the statements in the opinion of the appellate court are correct or incorrect as a whole as follows:

	Correct	Incorrect	Not Shown	Total
1. Petition for rehearing granted	once	Eleven times		12
2. Old judgment vacated	once	Eleven times		12
3. New judgment entered	once	Eleven times		12
4. Petition for rehearing in time for appeal	five times	five times	twice[4]	12
			Total	48

Recapitulation:

Correct	8 times
Incorrect	38 times
Not Showp	2 times
Total	48 times

These cases, whether considered separately or as a whole, establish **the long observed rule that the finality of an order for the purpose of appeal, is expunged by an application for rehearing which is seasonably filed, entertained, considered, and denied,** the order becoming final for the purpose of appeal upon the denial of the application for rehearing.

3.

The statement that the petitions for rehearing were filed for the mere purpose of extending the time for seeking review.

The opinion of the Appellate Court reads: R. 213, middle of page:

"Another distinguishing feature is that it is quite apparent from the record here that **appellant's petition for rehearing was filed merely for the purpose of reviving and extending the time for filing a petition for**

[4] But see Notes 2 and 3. These "Not stated" instances really belong to the "Incorrect" column making the score: Correct 8 times, Incorrect 40 times.

review, under which state of facts the court in the *Wayne* case said an appeal should be dismissed."

Again the appellant must respectfully differ from the appellate court's interpretation of the record. The record speaks again and again of the earnest and urgent insistance that the wrongs done be rectified by the conciliation commissioner where they were committed. "Let us look at the record."

First

R. 34: The actions of the conciliation commissioner occurred while the petitioner's counsel, J. E. Dazey, Esq., was incapacitated from apoplexy. Affidavit of J. E. Dazey, R. 34.

Second

R. 94: The local counsel (Mr. Coulson) engaged by Mr. Dazey (not by the petitioner) was not authorized to represent the petitioner substantively but merely to file and receive papers, and he never intended to act in any other capacity. He did not stipulate or agree that cows are perishable. Affidavit of R. E. Coulson. R. 94 to 95.

Third

R. 27. As soon as he heard that he was about to be sold out the farmer debtor, by new counsel, presented to the judge of the district court on September 17, 1940 (R. 3, entry of September 17, 1940) his "Petition for Emergency Restraining Order". R. 27 to 35. He recapitulated the proceedings in his case stating that the order of August 13, 1940, comprising the foreshortened stay period of 2 years, 8 months and 13 days, the excessive rent of $6,375 and the extra payments of $6,375 was void, that he desired to present evidence and the law, that he had not had such

opportunity, that he had not admitted or stipulated that any of his property was perishable and that he had already filed with the conciliation commissioner a petition for rehearing of the order of August 13, 1940 (the order "Fixing Rental and Additional Payments." R. 72). R. 27 to 32, paragraphs 1 to 7 and paragraph 10.

He further averred that no order for the sale of his cattle and other chattels had been entered by the conciliation commissioner, and that he had been informed that at the end of ten days from September 7, 1940, (that is, on the day he filed his application for an Emergency Restraining Order, see R. 27), the conciliation commissioner proposed to issue an order of sale. R. 32, paragraphs 8 and 9.

He further stated that upon the issuance of an order pursuant to the memorandum of September 7, 1940 (relating to the sale of his cows as "perishable", see R. 10, Conciliation Commissioner's entry of September 7, 1940)[5] he desired to file a petition for review thereof, or a rehearing as necessity should require. R. 33, paragraph 11.

This petition was verified by the petitioner, Henry Anton Pfister, by Robert E. Coulson, the local attorney, and by his new counsel, Elmer McClain. R. 33, bottom of page to R. 34, top of page. There was also presented to the district judge the affidavit of J. E. Dazey, Esq., in its support. R. 34. See also affidavit of Robert E. Coulson, Esq. R. 94.

Three of the respondents answered admitting part and denying part. R. 35 to 40.

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[5] The running heads at R. 6 to 13 should be "Entries on Conciliation Commissioner's Docket," not "Entries on Clerk's Bankruptcy Docket."

Fourth

R. 41: This "Petition for Emergency Restraining Order", R. 27 to 35 was denied by the district court on September 19, 1940. R. 41.

Fifth

R. 139 to 147. As stated to the judge of the district court on September 17, 1940 (R. 31, paragraph 6 at the end on p. 32) the petitioner had already filed with the conciliation commissioner his petition for rehearing of the order of August 13, 1940 (that is, the "Order Fixing Rental and Additional Payments"). This petition for rehearing appears at R. 139 to 145. On September 23 he filed an amendment thereto R. 145 to 147.

In this petition for rehearing he referred to the foreshortened stay period of three years from April 26, 1940, ordered August 13, 1940 (R. 140, paragraph 2); the rental payments of $6,375 to be paid within the foreshortened period (R. 140, paragraph 3); the principal payments of $6,375, making a total of $12,750 to be paid within such foreshortened period (R. 140, paragraph 4), stating verbatim the entries appearing on the conciliation commissioner's docket (R. 140 to 142, paragraph 5). He referred to the orders of appraisal and exemptions and the impossibility of meeting the payments ordered to be made therefrom (R. 142 to 144, paragraph 6). He stated that said order while bearing the approval of three secured creditors bore no other approval and that it was not presented to him or to his counsel and was not approved by him or by his counsel, that he had entered no objection and no hearing had been had on any objection. (R. 144 paragraphs 8 to 10).

He further stated that he had desired at all times during the pendency of his proceeding to present evidence on the subject of the order but had no opportunity to do so and that the evidence to be presented would demonstrate that the rental was contrary to law, and that said stay and possession period was unlawful. R. 144 to 145, paragraphs 11 to 14.

On September 23, 1940, his amendment to his petition for rehearing further stated that J. E. Dazey, Esq., had been engaged by him as his counsel and that Attorney Dazey engaged Robert E. Coulson, Esq., to file and receive papers and to do nothing else, and that up to September 7, 1940, Attorney Dazey had not known of any stipulation or agreements; and that Attorney Dazey had become incapacitated in May, 1940 from a stroke of apoplexy; that as soon as Attorney Dazey had learned, on about September 7, 1940, of the entry of the order of August 13, 1940, he, Attorney Dazey, had engaged new counsel to investigate the dockets and files and protect the rights of the farmer debtor. R. 146-147, paragraph 15.

The petition for rehearing and its amendment were verified by the petitioner. R. 147. The affidavit of Attorney Dazey at R. 34 was incorporated. The affidavit of Attorney Coulson at R. 94 was also incorporated.

Three of the respondents moved the conciliation commissioner to strike the petition for rehearing for lack of jurisdiction to consider it. R. 148. The conciliation commissioner overruled it. R. 149. Certain creditors filed answers to the petition for rehearing admitting part and denying part. R. 151 to 157.

Sixth

R. 88 to 96. On September 20, 1940, the petitioner filed with the conciliation commissioner his petition for rehearing of the three orders of September 7, 1940 (that is, the orders to sell cows, implements, etc. as "perishable." See R. 77 to 80. R. 80 to 82. R. 82 to 88. This petition for rehearing is at R. 88 to 96. He repeated the incapacity of his counsel, J. E. Dazey, Esq., from apoplexy and the limited authority of Robert E. Coulson, Esq., engaged by Attorney Dazey and not by petitioner, as local counsel to receive and file papers; that Attorney Dazey had engaged new counsel to investigate the proceedings as soon as he learned of them (R. 89, paragraph 2), **that on September 12, 1940, said new counsel went to the office of said conciliation commissioner, asked for the conciliation commissioner's docket and file in said cause and copied every entry pertaining thereto and examined and made notes of or copied every paper in said file, taking each paper separately therefrom, and carefully reading it,** and there was then on said docket no memorandum relating to the sale of petitioner's property except the docket entries copied therefrom in paragraph 6 of the petition for rehearing **and that there was then in said file no entry of September 7, 1940, ordering the sale of petitioner's chattels, namely cows** (R. 90, paragraph 3 and R. 92, paragraph 6 at R. 93, entry of "September 7, 1940"); that a week later on September 19, 1940, petitioner learned the three orders had been entered for the sale of his chattels (R. 90, paragraph 4). He set out the appraisal, the exemptions, and a list of chattels to be left to him by the sale of certain of his chattels and showed that the real estate and chattels left were not sufficient to enable him to operate his farm (R. 91 to 92, paragraph 5).

He further averred that neither he nor his counsel had admitted, consented or stipulated, as stated in the said

docket, that any of his chattels were perishable. R. 93, paragraph 7. He said he had desired and still desired to present the evidence and the law relating to the subject of said orders of September 7, 1940, and that he had not had opportunity to do so. R. 94, paragraph 8.

The affidavits of J. E. Dazey, Esq., and of Robert E. Coulson, Esq., were a part of this petition for rehearing. R. 94, paragraph 9 and see the paragraph following the prayer.

By an amendment to this petition for rehearing filed August 23, 1940, (R. 95, middle paragraph) the petitioner further stated that in reference to paragraph 4 concerning the "three orders" of September 7, 1940, he did not see them "until one of them was shown by" said conciliation commissioner to the district judge on September 19, 1940, and that until then he did not see or know its contents. R. 95, paragraph 10.

Seventh

In most of the cases where it has been held that a petition for rehearing filed "merely" to gain time for appeal will not accomplish its purpose, the facts have been that the lower court, for the accommodation of an appellant who had let the time for appeal go by, granted a rehearing for the purpose of reviving the time for appeal and without giving any consideration to the merits involved. The history of the petitions for rehearing in this instance is quite different. That history is now related:

Explicit petitions for rehearing and amendments were filed showing the strong reasons why rectification should be made in the orders. R. 88 to 97. R. 139 to 148.

Motions to dismiss the petitions for rehearing on the ground that the conciliation commissioner had no jurisdic-

tion to hear them were filed by the creditors and overruled by the conciliation commissioner. R. 148 to 150 relating to the petition to rehear the order of August 13, 1940 which fixed rental and extra payments. A similar oral motion was made and orally overruled as to the petition to rehear the orders of September 7, 1940, relating to the sale of cows etc., as "perishable but the record does not show it. See Note 1 at page 9 of this brief.

Answers were filed to both petitions for rehearing. Answer: R. 97 to 107. Reply: R. 107 to 108. Answer: R. 151 to 157. Re Amendment to Answer: R. 160, last part of paragraph ending "after leave of court given". R. 11, entry of September 26, 1940.

Hearings were had. R. 11, entry of September 26, 1940. R. 13, entry November 28, 1940. The "entire proceeding" was "considered." See R. 13, entry of November 28, 1940. "Referee's opinion and decision on Petition for Rehearing and amendment thereto of the Order of August 13, 1940", R. 158 to 164, and the "Referee's opinion and decision on Petition for Rehearing of Orders of September 7, 1940". R. 109 to 116. **These all show that the two petitions for rehearing were entertained and thoroughly considered by the court on their merits.**

It would seem to be demonstrated by the record that the petitions for rehearing were presented for relief and not merely to gain opportunity for appeal. What the farmer debtor wanted was the benefit of Section 75 and not litigation. It is impossible to read the pleadings, affidavits, and decisions and not conclude that the petitioner sought relief, not appeal.

4.

The point that the three orders of September 7 (to sell cows, etc., as "perishable") were "consent orders".

The appellate court says:
R. 313:

> "Furthermore, the three orders of September 7 appear from the record to be consent orders, and of course no right of appeal exists in appellant with respect to them."

The assertions of the conciliation commissioner and of the creditors that the farmer debtor "consented", or "stipulated" or "agreed" that his cows, bull, horses, sows, farm machinery and crops were "perishable," and that $6,375 rental and $6,375 extra principal payments making a total of $12,750 to be paid within 2 years, 8 months and 13 days, was "usual customary rental, net income and earning capacity of the property" or within "the debtor's ability to pay with a view to his financial rehabilitation", Section 75 (s) (2), are vigorously denied by the farmer debtor, by Attorney Dazey, and by Attorney Coulson. R. 32 paragraph 10. R. 34, top of page. R. 34-35. R. 93, paragraph 7. R. 94, paragraphs 8 and 9. R. 94 to 95. R. 142 to 144, paragraph 6. R. 144, paragraphs 8 to 11. R. 146, paragraph 15. R. 147, paragraph 16.

The circumstances, as well as the record, cry out that the orders of August 13, fixing rental and extra payments, and of September 7, 1940, to sell do not qualify to enter the legal category of "consent orders".

5.

The point that the District Court "Had no power" to hear the petitions for review.

The appellate court at R. 214 in the last paragraph of the opinion says: "The District Court followed the statute and **it had no power to do otherwise.**"

The District Court by its own statements in *In re Madonia*, (1940), 32 Fed. Sup. 165, discussed at No. 31 at page 25 of the "Supplemental Brief" herein) had already held it had adequate power.

The following Circuit Court decisions also held that **it had that power:**

Thummess v. *Von Hoffman*, CCA 3, (1940), 109 Fed. (2d) 291, discussed at No. 53, at page 40 of "Supplemental Brief" herein;

In re Albert, CCA 2, (1941), 192 Fed. (2d) 393. Discussed at No. 1, page 2 of "Supplemental Brief" herein;

Miller v. *Hatfield*, CCA 6, (1940), 111 Fed. (2d) 28, discussed at No. 33, at page 26 of "Supplemental Brief" herein;

Biggs v. *Mays*, CCA 8, (1942), 125 Fed. (2d) 693. (reported after the petition and brief for certiorari herein were prepared);

Bogum v. *Johnson*, CCA 8, (1942), 127 Fed. (2d) 491, (also reported after the petition and brief for certiorari herein were prepared.)

These five Circuit Courts of Appeals decisions from four different circuits held, contrary to the appellate court below, that Section 39(c) is not a limitation upon the juris-

diction of the court to hear a petition for review but merely a codification of a long standing rule of procedure. They held that Section 2 (10) and Section 38 are controlling and give a bankruptcy court ample power to hear a petition for review filed out of time.

The same district court, as noted in the *Madonia* case, had theretofore held with the same decisions. As is seen at R. 175 and R. 177, the sole basis for dismissing the petition for review was that the district court was "without jurisdiction" to hear and review them.

The following are other district court decisions in the same vein:

In re Amsterdam, District Court (1940), 35 Fed. Sup. 618, discussed at No. 2 at page 2 of "Supplemental Brief" herein;

In re Ragozinno, District Court (1941), 37 Fed. Sup. 524, discussed at No. 42, page 34 of "Supplemental Brief" herein;

In re Fergus Falls, District Court (1941), 43 Fed. Sup. 355, discussed at No. 17, page 16 of "Supplemental Brief" herein.

Authority in Support of the Specification of Errors.

The fifteen specifications of errors which are presented at pages 11 to 15 of this brief are based upon and follow "The Questions Presented" and the "Reasons Relied Upon for Allowance of a Writ of Certiorari" at pages 10 to 24 of the Petition for Certiorari.

As briefly as possible the authority in support of each specification of errors will be presented.

In Support of Specification of Error 1.

The appellate court erred in holding that the District Court did not have jurisdiction to hear a petition for review which was filed within the four months period following approval of appraisal fixed by Section 75(s).

The express provisions of Section 75 (s) is "That in proceedings under this section either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal."

The words "this section" can mean only "Section 75," and all of the section. It can not by judicial legislation be amended to read only some particular part of it.

In *Benitez* v. *Bank*, 313 U. S. 170, discussed at No. 5 at page 5 of the "Supplemental Brief" herein, this court established that the meaning of the words "this section" is "hardly open to question", it means this section 75.

Cole v. *HOLC*, CCA 8, (1942), reported so far only in Bankruptcy Law Service at paragraph 53877, was a case where, after ten days but within four months, a petition for review was filed to an order fixing the appraisal and the rental. It was held that the four months provision in Section 75 overrides the ten days provision of Section 39(c).

There was reason for this provision in Section 75. It was imagined that farmer debtor proceedings would not be subjected to vigorous and sustained attack. Therefore it was provided that the farmer debtor should need no attorney and that the conciliation commissioner should assist in all procedure. Section 75(q). It was supposed that the procedure would pass quickly out of Section 75(a) to (r) and into Section 75(s) and that any appeals could be collected

and taken all at once while the three year stay was running. This error in prophecy should not annul the plain provision of the statute.

In Support of Specification of Error 2.

The appellate court erred in holding that the district court had no jurisdiction to hear a petition for review which was filed within 10 days after the denial of a petition for rehearing of an order complained of, no right having intervened, and said petition for rehearing having been entertained and considered, and the entire proceeding having been considered by the conciliation commissioner.

A long and impressive array of decisions of this court from the beginning of American jurisprudence to the present has established this principle of law:

A petition for rehearing of an order, seasonably made when no right has intervened, if entertained and considered by the court, expunges the finality of that order for the purpose of appeal so that the time for appeal begins to run from the denial of the petition for rehearing.

The cases in which this rule is imbedded are here listed:

In the following cases the petition for rehearing was filed **after time for appeal had expired.**

Brockett v. *Brockett* (1844), 43 U.S. (2. How.) 238. No. 10 at page 9 of "Supplemental Brief" herein.

Washington v. *Bradley* (1869), 74 U.S. (7. Wall.) 575, discussed at No. 61 at page 46 of "Supplemental Brief" herein.

Slaughter House Cases (1870), 77 U. S. (10 Wall.) 273, discussed at No. 49 at page 37 of "Supplemental Brief" herein.

Memphis v. *Brown*, (1877), 94 U.S. (4 Otto) 715, discussed at No. 32 at page 26 of "Supplemental Brief" herein.

Morse v. *United States*, (1926), 270 U.S. 151, discussed at No. 35 at page 29 of "Supplemental Brief" herein. Note: In this case the issue was whether a motion for leave to file a motion for rehearing had the usual effect upon the time for appeal. The motion for leave was filed long after the time for appeal had expired, yet the opinion makes no mention of that fact. Several decisions where a petition for rehearing was filed after time were cited. See the discussion at No. 35 at page 29 of "Supplemental Brief" herein.

Gypsy v. *Escoe* (1927), 275 U.S. 498, discussed at No. 22 at page 19 of "Supplemental Brief" herein.

United States v. *Seminole*, (1937), 299 U. S. 417, discussed at No. 58 at page 44 of "Supplemental Brief" herein.

Wayne v. *Owens-Illinois*, (1937), 300 U.S. 131, discussed at No. 62 at page 46 of "Supplemental Brief" herein.

Bowman v. *Lopereno*, (1940), 311 U. S. 262, discussed at No. 8A at page 7 of "Supplemental Brief" herein.

In the following case there is nothing to show whether the petition for rehearing was filed within time for appeal but the decisions cited in the opinion show that the court

considered a **petition for rehearing filed after time had the usual effect** on the time for appeal.

Texas v. *Murphy*, (1884), 111 U.S. 448, discussed at No. 52 at page 39 of "Supplemental Brief" herein.

In the following cases there is nothing to show whether the petition for rehearing was filed within time for appeal time for appeal, and **there is nothing to show that the point was considered to be of any importance.**

Goddard v. *Ordway*, (*Phillips* v. *Ordway*), (1880), 110 U.S. (11 Otto), 745, discussed at No. 21 at page 18 of "Supplemental Brief" herein.

Northern v. *Holmes*, (1894), 155 U.S. 137, discussed at No. 38 at page 31 of "Supplemental Brief" herein.

Chicago v. *Basham*, (1919), 249 U.S. 163, discussed at No. 13 at page 11 of "Supplemental Brief" herein.

Citizens v. *Opperman*, (1919), 249 U.S. 448, discussed at No. 14 at page 12 of "Supplemental Brief" herein.

In the following cases the petition for rehearing was filed within time for appeal but **the citations of other decisions in which the petition for rehearing was filed after time show that whether within or without time for appeal was considered immaterial or there is nothing to indicate that the court considered the distinction to be of any importance.**

Aspen v. *Billings*, (1893), 150 U.S. 31, discussed at No. 4 at page 3 of "Supplemental Brief" herein.

Voorhees v. *Noye*, (1894), 151 U.S. 135, discussed at No. 60 at page 45 of "Supplemental Brief" herein.

Kingman v. *Western*, (1898), 170 U.S. 675, discussed at No. 30 at page 24 of "Supplemental Brief" herein.

United States v. *Ellicott*, (1912), 223 U. S. 524, discussed at No. 56 at page 42 of "Supplemental Brief" herein.

A few decisions of the Circuit Courts of Appeals are here cited to show that the rule is generally followed in the lower courts.

West v. *McLaughlin*, (1908), CCA 6, 162 Fed. 124, discussed at No. 64 at page 52 of "Supplemental Brief" herein.

Cameron v. *National*, (1921), CCA 8, 272 Fed. 874, discussed at No. 11 at page 10 of "Supplemental Brief" herein.

Harris v. *Mills*, (1939), CCA 10, 106 Fed. (2d) 976, No. 25 at page 20 of "Supplemental Brief" herein.

The rule is generally recognized by the bar. Hughes, "Federal Practice," Section 5698:

> "The time within which an appeal may be taken begins to run from the date of entry of the judgment or decree, unless a **petition for rehearing has been made** at the same term, and **is entertained by the court**, in which case **the time limited for an appeal does not begin to run until the application is disposed of**, though this is at a subsequent term. . . ."

The Chairman of the Supreme Court Advisory Committee in the formulation of the new Federal Rules of Civil Procedure said on the subject of a motion for rehearing:

> "When it" [an application for rehearing] "is denied, then you have your full time after that motion is denied to take your appeal. It does not merely cut out a section of time but **it destroys the finality of the**

judgment, and even though the time for making a motion for a new trial under the rules has ended, if you make a motion for leave to file a motion for a new trial after the time has expired, even though it isn't seasonable, **and the lower court entertains your motion on the merits** and then decides it—**that has obliterated the finality of the judgment** and you don't have to **take an appeal** until the three months or **thirty days**, as the case may be, **from the time the order is made denying your motion for a new trial.**" Quoted from the Statement of Honorable William D. Mitchell, Chairman, Supreme Court advisory committee, in the preparation of the Rules of Civil Procedure, reported in "Federal Rules of Civil Procedure and Proceedings of the American Bar Association Institute," Cleveland, Session 1938, page 371.

It has often been held that a proceeding in bankrutcy is one suit from start to finish, that there are no terms in bankruptcy, and that a bankruptcy court may at any time reconsider any former action so that the time of the entry of the original order would have no effect on the time for appeal. This makes inapplicable, in cases arising under the bankruptcy power, the limitation that the application for rehearing must be made within term.

Sandusky v. *National Bank*, (1875), 90 U. S. (23 Wall.) 289, discussed at No. 47 at page 36 of "Supplemental Brief" herein.

Wayne v. *Owens-Illinois* (1937), 300 U. S. 131, discussed at No. 62 at page 46 of "Supplemental Brief" herein.

Borchard v. *California*, (1940), 310 U. S. 311, discussed at No. 8 at page 6 of the "Supplemental Brief." Note: The principal was applied. This subject is not mentioned but the several orders in the case entered in preceding years were held not binding on the parties and considered of no effect.

Circuit Courts of Appeals decisions:

In re Burr, (1914), CCA 2, 217 Fed. 106, discussed at No. 10A at page 10 of "Supplemental Brief" herein.

In the Matter of Pottasch, Central v. *Irvin*, (1935), CCA 2, 79 Fed. (2d) 613, discussed at No. 40 at page 32 of "Supplemental Brief" herein.

In re Jayrose, (1937), CCA 2, 93 Fed. (2d) 471, discussed at No. 28 at page 22 of "Supplemental Brief" herein.

In re Albert, Brooklyn v. *Albert*, (1941), CCA 2, 122 Fed (2d) 393, discussed at No. 1 at page 2 of "Supplemental Brief" herein.

In re Mercur, (1903), CCA 3, 122 Fed. 384, discussed at No. 32A at page 26 of "Supplemental Brief" herein.

In re Jemison, (1902), CCA 5, 112 Fed. (2d) 966, discussed at No. 28A at page 23 of "Supplemental Brief" herein.

In re Ives, (1902), CCA 6, 113 Fed. 911, discussed at No. 27 at page 22 of "Supplemental Brief" herein.

In re Hamilton, (1913), CCA 7, 209 Fed. 596, discussed at No. 23 at page 20, of "Supplemental Brief" herein. **This is the circuit to which certiorari is granted in this cause.**

First v. *Belle Fourche*, (1907), CCA 8, 152 Fed. 64, discussed at No. 18 at page 16 of "Supplemental Brief" herein.

This principle that the filing and entertaining of an application for a rehearing or a new trial stays or expunges the finality of the order or judgment on which a rehearing

is sought is of ancient origin and is universally recognized.

The federal statute reads:

> "No appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court shall be allowed or entertained unless application therefor be made **within three months after the entry** of such judgment or decree," . . . 28 U. S. C. 350.

This general form of statute is found in every state. It is never literally followed—the original entry is, by a fiction, held to be obliterated by the filing of an application for rehearing.

It is probably true that in the majority of cases coming into this court and heard on certiorari or appeal applications for rehearing have been made below and denied. No doubt in the vast majority of all of the cases heard by this court, the application for certiorari or for appeal has been made more than the statutory period "**after the entry**" of the order complained of. As this court has explained in *Gypsy* v. *Escoe* (1927), 275 U. S. 498, and in many other opinions, and as legal text writers have stated, the filing of an application for rehearing destroys the finality of an order so that, for the purpose of seeking a review, the finality dates at the denial of the application for rehearing, and not from "the entry."

In practice it rarely occurs that an application for rehearing is made and granted and after hearing the original order is formally reissued.

The same principle is followed in the motion for a new trial of a law case. The motion for a new trial is heard and denied and from the denial the time for seeking appeal or error begins to run. The law court never tries the case over again before denying a motion for new trial.

There is sound reason for the rule. By permitting the aggrieved party to make application for rehearing without jeopardizing his right to seek review if he fails to obtain a hearing, two things are accomplished:

1. If, when the court entertains and considers the application for rehearing, it becomes convinced that it was in error, the error may be corrected. Thus the time and expense of seeking, arguing, and deciding a case on review is made unnecessary. This is advantageous to the public, to the courts, and to the litigants.

2. If upon entertaining and considering the application for rehearing, the court denies it, the points at issue are thereby, at least, cleared up in the minds of the judges, the litigants and their counsel. The result is a more clear cut delineation of the issues before the reviewing court.

In Support of Specification of Error 3.

The appellate court erred in holding that the district court had no jurisdiction to hear a petition for review of a void order of a conciliation commissioner unless such petition for review was filed within ten days of the entry of such void order.

The order of August 13, 1940, for extra principal payments was made without notice to the farmer debtor or to any creditor (except of course the creditors presenting the motions on that day). It is void. R. 9, entry of August 13, 1940.

A few specific authorities upon this precise subject of hearing before a referee in bankruptcy proceedings will suffice.

Remington on Bankruptcy, in Section 27 relating to Celerity of Proceedings, says:

> "While proceedings in bankruptcy may be summary, they should not be so summary as to deprive a party of those fundamental rights that belong to every citizen, among which are the rights to be advised by the demand made upon him, and after being so advised, to have a reasonable time to prepare his defense and produce his witnesses."

Likewise in his Chapter XXXVI on Summary Jurisdiction over the Bankrupt, Remington says in Section 2406:

> "Reasonable notice must be served on the bankrupt or other party upon whom the order is requested so that he may have reasonable time to prepare for his defense."

In Section 2408:

> "Due hearing must be had, and reasonable opportunity therefor is requisite."

In support of the foregoing statements Remington quotes at length from three opinions: (1), *In re Rosser*, 111 Fed. 106, discussed at No. 44 at page 35 of "Supplemental Brief" herein; (2) *Boyd* v. *Glucklich*, 116 Fed. 131, discussed at No. 9 at page 8 of "Supplemental Brief" herein, and (3) *In re Frank*, 182 Fed. 794, discussed at No. 19 at page 17 of "Supplemental Brief" herein. These decisions relied upon the decision of this Court in *Galpin* v. *Page*, 85 U. S. (18 Wall.) 350, 368, discussed at No. 20 at page 18 of "Supplemental Brief" herein. Other decisions are in the same tenor: *Morgan* v. *U. S.*, 304 U. S. 1, discussed at No. 34 at page 28 of "Supplemental Brief" herein; *Holden* v. *Hardy*, 169 U. S. 366, 389, discussed at No. 26 at page 21 of "Supplemental Brief," and *Coe* v. *Ar-*

mour, 237 U. S. 413, 426, discussed at No. 15 at page 13 of "Supplemental Brief" herein.

In Support of Specification of Error 4.

The appellate court erred in holding that the district court had no jurisdiction, while a farmer debtor proceeding was still pending, to hear a petition for review of an order entered by a conciliation commissioner, regardless of when such petition for review was filed.

It is to be remembered that the district court dismissed the petitions for review on the ground that it **had no jurisdiction.**

Please refer for authority for this specification to the preceding list of decisions at pages 39 and 40 holding that the bankruptcy is one suit and there are no terms in bankruptcy, so that a bankruptcy court may reconsider an order at any time.

In Support of Specification of Error 5.

The appellate court erred in holding that Section 39(c) of the Bankruptcy Act in naming ten days for the filing of a petition for review is a statutory limitation and not a rule of procedure.

Section 39(c) is subject to Section 2(10) and Section 38 of the Bankruptcy Act. That section 39(c) is the enactment of a rule of procedure which remains such is attested:

By Section 2(10) of the Act which provides that courts of bankruptcy are invested with original jurisdiction to

consider and reverse or remand with instructions, the records, findings and orders of referees.

By Section 38 which makes the referees' jurisdiction and proceedings always subject to review by the judge.

The courts have overwhelmingly so held:

Second Circuit:

In re Albert, Brooklyn v. *Albert*, CCA 2, 122 F. (2) 393, discussed at No. 1, page 2 of the "Supplemental Brief" herein.

Third Circuit:

Thummes v. *Van Hoffman*, CCA 3, 109 F. (2) 291, discussed at No. 53 at page 40 of the "Supplemental Brief" herein.

Sixth Circuit:

Miller v. *Hatfield*, CCA 6, 111 F. (2) 28, discussed at No. 33 at page 26 of the "Supplemental Brief" herein.

Eighth Circuit:

Biggs v. *Mays*, CCA 8, (1942), 125 Fed. (2d) 693.

(This opinion was reported after the petition for certiorari was filed in this case.)

The court said:

"Section 39, sub. (c) providing that an aggrieved party may petition for a review of the order of a referee, is not a condition upon the jurisdiction of the court. It in no way limits the power of the court, but is merely procedural. It limits only the right of an aggrieved party without impairing the power or discretion of the court. *Thummes v. Von Hoffman* (CCA 3rd Cir.), 109 F. (2d) 291; *In re Albert* (CCA, 2nd Cir.), 122 F. (2d) 393, 394. The powers of the judge as a court of bankruptcy are defined in the statutes and in the General Orders. Section 2(10) of the Act (11 U. S. C., Sec. 11), states that the courts of bankruptcy

have jurisdiction to 'Consider records, findings and orders certified to the judges by the referees, and confirm, modify, or reserve such findings and orders, or return such records with instructions for further proceedings.' Section 38 of the Act (11 U. S. C. Sec. 66) provides that 'Referees are hereby invested, subject always to a review by the judge, with jurisdiction to * * * (6) perform such of the duties as are by this title conferred on courts of bankruptcy * * *.' In *Wayne Gas Co.* v. *Owens Co.*, 300 U. S. 131, 137, the Supreme Court said: 'The (bankruptcy) court has the power, for good reason, to revise its judgments upon reasonable application and before rights have vested on the faith of its action'."

Bogum v. *Johnson*, CCA 8 (1942), 127 Fed. (2d) 491.

(This opinion also was reported after the petition for certiorari was filed in this case.)

"The manner in which a review of a Referee's order may be obtained as a matter of right is prescribed by C. 575, Sec. 1 of the Chandler Act of June 22, 1938, 52 Stat. 858, 11 U. S. C. A. Sec. 67, sub. c [Section 39(c)], but this provision does not purport to impose any limitation upon the discretionary power of the District Court to assume jurisdiction to make a review."

The district court below itself so held shortly before the final orders in this case were entered, *In re Madonia*, District Court Illinois, 32 Fed. Sup. 165, discussed at No. 31 at page 25 of the "Supplemental Brief" herein.

Other district court decisions have held the same:

In re Amsterdam, District Court of New York, 35 Fed. Sup. 618, discussed at No. 2, at page 2 of the "Supplemental Brief" herein.

In re Ragozinno, District Court of New York, 37 Fed. Sup. 524, discussed at No. 42 at page 34 of the "Supplemental Brief" herein.

In re Fergus Falls, District Court of Minnesota, 43 Fed. Sup. 355, discussed at No. 17 at page 16 of the "Supplemental Brief" herein.

In Support of Specification of Error 6.

The appellate court erred in holding that Section 2(10) of the Bankruptcy Act is limited by Section 39(c) of that act.

Please see the authority listed under the preceding "Specification of Error 5."

In Support of Specification of Error 7.

The appellate court erred in holding that Section 38 of the Bankruptcy Act is limited by Section 39 (c) of that Act.

Please see the authority listed under the preceding "Specification of Error 5."

In Support of Specification of Error 8.

The appellate court erred in holding, in a farmer debtor proceeding pending before a conciliation commissioner where a petition for rehearing of an order is filed, no right having intervened, and where also said petition for rehearing is entertained by the conciliation commissioner who overruled a motion to dismiss it for lack of jurisdiction to entertain it, and considers the whole proceeding and then denies the petition, that the time for seeking a review of said order does not run from the date of the denial of such petition for rehearing.

This court has repeatedly stated in its twelve unanimous opinions upholding Section 75 that it was enacted for a purpose which may not be defeated by narrow constructions. They are:

Wright v. *Vinton* (1937), 300 U. S. 400;
First v. *Beach* (1937), 301 U. S. 435;
Adair v. *Bank* (1938), 303 U. S. 350;
Wright v. *Union* (1938), 304 U. S. 502;
John Hancock v. *Sartels* (1939), 308 U. S. 180;
Gray v. *Union* (1939), 308 U. S. 523;
Morrison v. *Federal* (1939), 308 U. S. 524;
Kalb v. *Feuerstein* (1940), 308 U. S. 433;
Borchard v. *California* (1940), 310 U. S. 311;
Wright v. *Union* (1940), 311 U. S. 273;
Benitez v. *Bank* (1941), 313 U. S. 270;
Wright v. *Logan* (1942), 315 U. S. 139.

Section 75 differs in many important respects from the other four provisions for the relief of debtors.

(1) Section 75(q) provides that:

"A conciliation commissioner shall upon request **assist any farmer** in preparing and filing a petition under this section and **in all matters** subsequent thereto **arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section."**

There is placed upon the conciliation commissioner the duty to protect all of the rights of the farmer debtor. He may not take the attitude of a referee in regular bankruptcy that "Whatever is all right with the creditors is all right with me." Quite contrary to the situation in regular bankruptcy the creditors in a farmer debtor proceeding do not control it.

(2) "Any farmer failing to obtain the acceptance" of a composition or extension proposal "or if he feels himself aggrieved by the composition and/or extension, may amend his petition . . ."

(3) Contrary to all other debtor provisions under Chapter VIII of the Bankruptcy Act there is no authority in Section 75 for dismissing a farmer debtor case.

(4) Contrary to all other such statutes there is no provision for finding that a farmer debtor petition is filed in good faith or dismissing it.

(5) The right of the farmer debtor to redeem may not be cut off by a request for a public sale. *Wright* v. *Union Central*, 311 U. S. 273.

(6) The statute quite clearly was enacted to **accomplish a purpose.** The ultimate goal is the opportunity of the farmer debtor to redeem after a three year stay under Section (75s). That purpose can not be thwarted by indirectly accomplishing a forbidden dismissal through the

device of (1) a foreshortened stay and rental period, (2) unreasonable rent, (3) impossible principal payments, and (4) sale of all a farmer debtor's chattels so that he has not capital for earning the wherewithal for his rehabilitation, and then finally invoking the authority in Section 75(s)(3), to punish him for violation of the conciliation commissioner's orders. The conciliation commissioner would thereby be doing indirectly what the statute and the decisions of this court prohibit.

In Support of Specifications of Error 9 and 10.

Specification of Error 9.

The appellate court erred in holding that in a farmer debtor proceeding the period named in Section 39(c) of the Bankruptcy Act limits the time within which a petition for rehearing of an order may be filed with a conciliation commissioner, no right having intervened.

Specification of Error 10.

The appellate court erred in holding that a conciliation commissioner in a farmer debtor proceeding may not entertain or consider a petition for rehearing of his order except when such petition is filed within ten days of the entry of the order, even though no right has intervened.

In relation to Specifications 9 and 10, the purpose of Section 75 makes stronger the reasoning discussed under the previous "In Support of Specification of Error 1" and that under heading "In Support of Specification of Error 2" and that under heading "In Support of Specification of Error 5."

In Support of Specifications of Error 11, 12, 13 and 14.

Specification of Error 11.

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, on the ground of lack of jurisdiction, a petition for review of the order of the conciliation commissioner which fixed the statutory stay and rental period in the farmer debtor proceeding to run from a date prior to the approval of the appraisal and prior to the order setting aside exemptions.

Specification of Error 12.

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, on the ground of lack of jurisdiction, a petition for review of the statutory order of the conciliation commissioner which stayed proceedings and permitted possession to be retained by the farmer debtor upon payment of rental, and made the time of such stay and possession less than three years.

Specification of Error 13

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner which ordered sold as perishable property the farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay fodder, ensilage, oats, barley, rye and wheat.

Specification of Error 14

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order by a conciliation commissioner ordering the farmer debtor to pay as rental and as payments on the principal of his debts, within 2 years, 8 months and 13 days, the total sum of $12,750 where the appraisal of all the real estate is $16,000 and the appraisal of all the unexempt chattels is $1,786.

The orders referred to in specifications 11, 12, 13 and 14, were void because the conciliation commissioner had no authority to issue them:

The orders in (11) and (12) fixing the statutory stay and rental period and restricting possession and payment of rental to run from a date preceding the approval of the appraisal and the setting aside of exemptions were as void as if a conciliation commissioner should fix the stay period to begin at a date more than three years preceding the entry of the stay order and then proceed to order a sale because the stay had terminated without redemption. Though there is a difference in amount of time, there is no difference in principle between the orders actually issued and the supposed one.

The orders referred to in (13) which characterized the farmer debtor's livestock, farm machinery and farm crops as "perishable" and used that device to accomplish their immediate sale, ostensibly did not interfere with the statutory stay, possession and rental period, but nevertheless effectually ended it.

The order referred to in (14) fixed rental and principal payments in the total of $12,750 to be paid in 2 years, 8 months and 13 days, to be earned from an 80 acre dairy farm appraised at $16,000 for real estate and $1,786 for chattels, the chattels having been ordered sold. Such impossible orders are a nullity. If they may be accorded sanctity because issued by a conciliation commissioner in the administration of the farmer debtor law which enjoins upon him the execution of a trust if the farmer debtor confides in him [Section 75 (q)], then there is no farmer debtor law because it creates its own self destruction.

This court said in *Mitchell* v. *St. Maxent* (1866), 71 U.S. (4 Wall) 237: "Void process confers no right on an officer to sell property and all acts done under it are absolute nullities". In *Gaines* v. *New Orleans* (1868), 73 U.S. (6 Wall.) 642, this court said: "Where sales are irregular, but those who bought the property did it in good faith and without notice, they are not protected except by the bar of time prescribed by the law."

So in *Williamson* v. *Berry* (1850), 49 U.S. (8 How.) 495 541, this court said: "But if it [a court] act without authority, its judgments and orders are nullities; . . ." To the same effect: *Gantley* v. *Ewing*, (1845), 44 U.S. (3 How.) 717, 713, 714, 715; *Voorhees* v. *Jackson*, (1836), 35 U.S. (10 Pet.) 449, No. 59 at page 45 of the "Supplemental Brief" herein; *Thompson* v. *Tolmie*, (1829), 27 U.S. (2 Pet.) 157, 163.

In Support of Specification of Error 15.

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner, when proceedings for obtaining such review had been perfected by the filing of a petition for review by a person aggrieved by such order and the serving of a copy of said petition upon the proper adverse parties, and when the conciliation commissioner had duly prepared and transmitted to the clerk his certificate on said petition for review, all in compliance with Section 39(c) of the Bankruptcy Act, such dismissal being based upon the sole reason that said petition for review was not filed within ten days after the original entry of the order complained of.

Again, it is to be noted that the district court dismissed the petitions for review for **lack of jurisdiction** and the appellate court sustained those dismissals.

Section 2(10) specifically invests the district court "with such jurisdiction . . . as will enable them to exercise original jurisdiction . . . to . . . consider records, findings and orders certified to the judges by referees . . . "

Now the conciliation commissioner duly certified his records, findings and orders to the judge and the judge had statutory jurisdiction to consider them.

CONCLUSION.

To the petitioner it appears to be evident that the decision below calls for the interpretation of the several statutes of the United States involved therein; that the decision of the court below is in conflict with the decisions of several other Circuit Courts of Appeals; that the court below has decided important questions of federal law which have not been, but ought to be, settled by this court; that it has decided the various federal questions referred to in a way conflicting with applicable decisions of this court; and that it has so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the district court, as to call for this court's exercise of its power of supervision.

The petitioner prays that the orders of the appellate court be reversed and this case remanded to the district court for proper action in accordance with law.

Respectfully submitted,

ELMER MCCLAIN,
Counsel for Petitioner.

Lima, Ohio,
September 22, 1942

APPENDIX A.

Sections of the Bankruptcy Act Which Are Involved.

Section 2. "The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested . . . with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereinafter held, to . . . "

(10). "Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings; . . . "

Section 38. "Referees are hereby invested, subject always to a view by the judge, with jurisdiction to" . . . [conduct specified proceedings in bankruptcy matters].

Section 39. "a. Referees shall" . . . "(8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits; . . . "

"c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing." . . .

Section 75 follows.

76TH CONGRESS
3d Session
SENATE
DOCUMENT
No. 205

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED BY—

PUBLIC 290 OF THE SEVENTY-THIRD CONGRESS
PUBLIC 60 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 384 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 439 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 696 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 423 OF THE SEVENTY-SIXTH CONGRESS

TITLE 11, SECTION 203, UNITED STATES CODE

(Reprint of Senate Document No. 55, 75th Congress)

PRESENTED BY MR. NYE
FOR MR. FRAZIER

JUNE 10 (legislative day, MAY 28), 1940.—Ordered to be printed with certain corrections

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

[PUBLIC—No. 420—72D CONGRESS]

[H. R. 14359]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as amended by the Acts of February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917, January 7, 1922, May 27, 1926, and February 11, 1932, be, and it is hereby, amended by adding thereto a new chapter to read as follows:

"CHAPTER VIII

[As amended by the 73rd, 74th, 75th, and 76th Congresses]

"PROVISIONS FOR THE RELIEF OF DEBTORS

"SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.—(a) Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners', one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further*, That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a term of office for one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee [1] and in addition is a resident

[1] Sec. 35 of Chandler Act, Public, 696, of the 75th Cong., requires all new referees to be attorneys.

of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

"(b) Upon filing of any petition by a farmer under this section there shall be paid a fee of ~~$10 to be transmitted to the clerk of the~~ court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services, a fee of $25 for each case submitted to him, ~~and when docketed, to be paid out of the Treasury~~ *to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court.* A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of $5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

"(c) At any time ~~within 5 years after March 3, 1933,~~ *prior to March 4, 1944,* a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

"(d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

"(e) The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

"(f) There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

"(h) A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

"(i) The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

"(j) The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24,

of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

"(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

"(l) Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under title 11, chapter 7, section 104, of the United States Code, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition, or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

"(m) The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirma-

tion of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

"(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

"(q) A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

"(r) For the purposes of this section, *and* section 4 (b), ~~and section 74,~~ the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy

farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and

earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee; when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed $35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of

this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

~~"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection(s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.~~

"(5) *This Act shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that subsection(s) of section 75 of this Act was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.* Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section.

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceeded to liquidate the estate.

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